

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James Gharib

Art Unit: 3736

Serial No.: 10/809,280

Examiner: Jonathan M. Foreman

Filing Date: March 25, 2004

Title: System and Methods for Performing Surgical Procedures and Assessments

Certificate of Transmission: I hereby certify that this paper or fee is being transmitted to the United States Patent and Trademark Office via EFS-Web on August 5, 2008.

Signature: _____


Rory Schermerhorn**Petition to Accept Unintentionally Delayed Claim for Priority under 37 CFR 1.78(a)(6)**

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified application was filed on March 25, 2004 as a continuation of PCT Patent Application No. PCT/US02/30617 under 35 USC 1.111(a). PCT Application No. PCT/US02/30617 was filed September 25, 2002 and claimed benefit under 35 USC 119(e) to US Provisional Application No. 60/325,424, filed September 25, 2001. Upon conducting a review of the above-identified application after receiving a notice of allowance, Applicants became aware that the specification included a claim for priority to the PCT Application, but reference to the provisional application was inadvertently omitted from the specification.

The Applicants hereby petition for acceptance of this unintentionally delayed claim under 35 USC 119(e) for the benefit of a prior-filed provisional application. In support, the Applicants respectfully submit the following items required under 37 CFR 1.78(a)(6):

- a) An accompanying amendment amending the specification to contain a reference identifying the provisional application in the first sentence following the title, as required by 35 USC 119(e) and 37 CFR 1.78(a)(5);
- b) The required surcharge set forth in 37 CFR 1.17(t) of \$1,410.00, chargeable to Deposit Account No. 50-2040 to NuVasive, Inc.; and
- c) STATEMENT: The entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional.

In the event that there are any additional fees due in connection with this petition or the accompanying amendment, the Applicants hereby request that any charges be made to Deposit Account No.: 50-2040 for Customer No.: 30,328. If there are any questions concerning the remarks above or the application in general please telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,
NUVASIVE, INC.

By: 

Rory Schermerhorn, Esq.
Registration No. 58,148

4545 Towne Centre Court
San Diego, CA 92121
Tel.: (858) 909-1845

August 5, 2008